

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

MARCH 12, 2015

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, March 12, 2015, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
James Dissen
Dan Marshall

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the previous meeting were sent out. Did everybody have a chance to look them over? Is there a motion to approve?

Kent Hartsog made the motion to approve the minutes from the January 22, 2015 meeting. The motion was seconded by Dan Marshall and passed unanimously.

3. Office of Judges' Report – Alan Drescher, Deputy Chief Administrative Law Judge

Judge Alan Drescher: Chairman, and members of the Council, Judge Roush is out of town today so she asked me to make the presentation. I wanted to mention the continuing theme that the protests continue to decline. We actually received 223 in February. That's a very small number for us. We think that's partially attributable to the weather. We had several days where people weren't able to make it into the office. We'll see if those numbers pick up in March.

For calendar year 2014, we ended up with 4,090 protests acknowledged for the year, and that's roughly 500 to 600 less than the year before. Right now it looks like it's going to be another 600 fewer protests for 2015, but we'll see how that goes.

One other thing I wanted to mention specifically is on page six of the report – the Pending Caseload Comparison. As of March 2, when we ran the report, we had 2,634 protests in our office to be decided. That is also about 500 less than we had one year ago at this time. Those numbers are consistent with what we're acknowledging. I'd be happy to address any questions anybody has about this report.

Chairman Dean: Mr. Dissen, any questions?

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Thank you, sir.

Judge Drescher: The only other thing I wanted to mention is that we did have an event in our office yesterday. We had a water pipe break upstairs. It flooded part of the third floor and water dripped down in our offices on the second floor. So, we had quite a bit of water in our offices when we got in yesterday morning. We are working our way through that, and fortunately it's just a small part of the office. It did, unfortunately, clear our hearing rooms. We had to cancel hearings yesterday and today. Hopefully, we'll be back up and running next week so we'll get those rescheduled. I don't foresee any long-term effects as a result of this.

Chairman Dean: Very good.

4. General Public Comments

Chairman Dean: We'll move onto general public comments. Does anybody from the general public have a comment?

5. Old Business

Chairman Dean: We'll move onto old business. Does anybody from the Industrial Council have anything they would like to bring up under old business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner Riley?

Commissioner Michael Riley, OIC: No, sir.

Chairman Dean: Mr. Pauley?

Andrew Pauley, General Counsel, OIC: No, sir.

6. New Business

Chairman Dean: Moving on, we'll go onto new business. Does anybody from the Industrial Council have anything they would like to bring up under new business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: I was going to ask Mr. Pauley if he would take a couple of minutes and talk about any legislation that is running or on the Governor's desk or has been signed related to workers' comp.

Andrew Pauley, General Counsel, OIC: This is not meant to be comprehensive. This is off the cuff. It's also premature because obviously the Session does not end until Saturday, and anything can happen from now until then. The Governor may choose not to sign a Bill; may choose to veto a Bill; other amendments may be made on the floor. I think the two main Bills, one being the "Deliberate Intent," the Mandolidis type of reform is. . . I believe it's still pending. It is still on the floor of one of the Houses. It hasn't completely passed yet. Again, I won't go into all the details. But I think the intention is to make it more "actual knowledge" as opposed to "constructive knowledge" in the finding of inference of intent or knowledge of a supervisor or someone responsible for safety for a corporation or a business that subjects someone to a dangerous safety violation. The proof has to be more specific to the knowledge and intent of the person as opposed to inferring it from constructive information. The ramifications it may have on workers' compensation – and we're continuing to look at it because it has changed – the House version. One of the issues that is being looked at in the language is it's changing the ability of a person to file the claim – what percentage of disability they have; what injury they have. The House set a threshold, which had to be at least a 10% PPD award. If it's not within the confines of the Office of Judges that a claim hasn't already been litigated and found, they can send that to an outside expert. We're still looking at what effect that would have on the Office of Judges' process – what weight they would give it. There was a disclaimer in the statute that said it is not binding on the Office of Judges, but still we want to see what effect that would have. Now the Senate kind of re-wrote all of that and added some different priorities. So, most likely this is going to go to a conference committee. If it's going to be worked out it's going to be probably late Saturday night, if they work it out, unless the House concurs and takes the Senate changes. There are too many changes to go into right now. The Senate sort of went to a "certificate of need" type of thing like you have with medical malpractice where you've got to have a doctor sign off on the injury or the disability; a serious disability or injury from the accident to pursue a "deliberate intent claim." That's where that one's at. The two Houses could work that out – and if the Governor signs it. Because it will be late in the Session it will probably be too late to override a veto, so we just have to see where it's all going to go. It is still speculative at this point.

The other significant Bill is "Settlement of Occupational Disease Claims for Medical." As you may know, the current statute allows for settlement of any trauma claims for their indemnity, which is their wage loss and their medical bills. We do that every day. The Old Fund obviously has cases – self-insured employers, private insurers. As far as OD, which is occupational disease, of which OP is a subset of that – occupational pneumoconiosis, black lung, and other OD claims, such as hearing loss; silicosis, asbestos, those type of lung injuries; heart if it can be related back to work as

opposed to just naturally occurring in your life. Those could now be settled under existing law for indemnity – the wage replacement. They can't be settled for the medical. What this Bill will allow is simply an option for people [if they want] to settle medical also – to have a full and final settlement of an OD claim. But the one requirement is the claimant will have to have an attorney represent them. So there will be no “pro se settlements” or “on their own settlements” of occupational disease claims for medical unless you are represented by counsel. Again, that has passed out of both Houses, and it is on the Governor's desk. As of right now, he hasn't signed it.

Mr. Hartsog: Any idea what the benefit or detriment to the liability in the Old Fund would be from this Bill?

Mr. Pauley: It is too difficult to tell. I think that it just depends on the situation. It provides another option for people to settle. Settlements, obviously, can potentially reduce liability, but the settlements have to be right for both parties. That is, it has to protect the party, and make sure their medical and their situation is taken care of. Generally, settlements can allow in certain situations for a settling defendant to put up less funds, but structure it in an annuity and pay out the exact same amount or more over a person's life. So it can allow for cost reductions. It just depends on the situation.

Mr. Dissen: I'm just curious. Did they have anything in the Bill as far as putting a cap on attorney fees?

Mr. Pauley: No. And that was brought up, but no one has. . . I believe there is a 20% allowance for attorney fees, but on medical only for these type of situations. There was some concern that it could be an unconscionable attorney fee. If its a million dollars for a lung transplant or something like that, you take 20% of that. It would have to be structured. But most parties get together on settlements with attorneys and they figure a way to structure it so that the benefits are funded for the person and taken care of; and if there are attorney fees that need to be worked out those are usually worked out in a particular ramification of settlement. Again, that would more be regulated by a complaint to the State Bar than anything we would regulate.

Mr. Dissen: Thank you.

Chairman Dean: Any other questions for Mr. Pauley? Mr. Marshall, do you have any?

Mr. Marshall: No. Andrew, I'd appreciate it at the next meeting, after all of this has been digested, if you'd bring us up to speed.

Mr. Pauley: Certainly. We'll do that.

Mr. Hartsog: Good suggestion.

Chairman Dean: Thank you, sir. Mr. Marshall, do you have anything under new business?

Mr. Marshall: No, sir.

Chairman Dean: Commissioner, do you have anything you'd like to bring up under new business?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

Chairman Dean: Very good.

7. Next Meeting

Chairman Dean: The next meeting will be Thursday, May 21, 2015 at 1:00 p.m. Does that meet everybody's schedule?

8. Adjourn

Chairman Dean: Is there a motion for adjournment?

Mr. Dissen made the motion for adjournment. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 1:20 p.m.